

STATE OF MICHIGAN
COURT OF APPEALS

In re J. R. D. RAWSON, Minor.

UNPUBLISHED

May 19, 2015

No. 323227

Wayne Circuit Court

Family Division

LC No. 12-509231-NA

Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Because reasonable efforts were made to accommodate respondent's disability and the trial court did not clearly err by terminating respondent's parental rights, we affirm.

To terminate parental rights, the trial court must find that "one or more of the statutory grounds for termination listed in MCL 712A.19b(3) have been proven by clear and convincing evidence." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). The trial court then must find that termination of parental rights is in the child's best interests by a preponderance of the evidence. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights. . . ." MCL 712A.19b(5).

On appeal, we review the trial court's decision to terminate parental rights for clear error. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Likewise, we review the trial court's findings of fact, including a finding that the Department of Human Services (DHS) made reasonable efforts toward reunification, for clear error. *In re Fried*, 266 Mich App 535, 541-543; 702 NW2d 192 (2005). A decision is clearly erroneous only when this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

On appeal, in challenging the trial court findings regarding statutory grounds for termination under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), respondent argues only that termination was inappropriate because the DHS failed to provide reasonable efforts to assist respondent in rectifying the conditions that led to the minor child's removal from respondent's home. Specifically, before the trial court assumed jurisdiction over the minor child, respondent was severely injured when he was struck by a car while riding a bike. The accident left

respondent blind in one eye, and he suffered brain, leg and hip injuries which he now contends impaired his ability to transport himself to many of the proffered reunification services. Given his injuries, respondent maintains the Americans with Disabilities Act (ADA), 42 USC 12101 et seq., required the DHS to make reasonable accommodations for respondent's transportation needs and that, in the absence of such transportation accommodations, termination of his parental rights was clearly erroneous.

Generally, in petitioning for the termination of parental rights, the DHS "must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). These reunification services must comply with the ADA, meaning that the DHS must "make reasonable accommodations for those individuals with disabilities" *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). Before entering an order of disposition, the trial court is required to state whether reasonable efforts have been made to rectify the conditions that caused the child to be removed from the home. *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). If the DHS "fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *In re Terry*, 240 Mich App at 26. The failure to make reasonable efforts to avoid the termination of parental rights may prevent the establishment of statutory grounds for termination. See *In re Newman*, 189 Mich App 61, 67-68; 472 NW2d 38 (1991); see also *In re Fried*, 266 Mich App at 541. However, "[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). And, once children come within the jurisdiction of the court, a parent, whether disabled or not, must demonstrate that he can meet the basic needs of his children before they will be returned to his care. *In re Terry*, 240 Mich App at 28.

To preserve a claim that the DHS failed to provide reasonable accommodation as required by the ADA, "the parent should claim a violation of [his] rights under the ADA, either when a service plan is adopted or soon afterward." *Id.* at 26. Failure to timely assert a claim that the DHS is violating a parent's rights under the ADA constitutes a waiver of the issue. *Id.* at 26 n 5.

Where a disabled person fails to make a timely claim that the services provided are inadequate to her particular needs, she may not argue that petitioner failed to comply with the ADA at a dispositional hearing regarding whether to terminate her parental rights. In such a case, her sole remedy is to commence a separate action for discrimination under the ADA. At the dispositional hearing, the family court's task is to determine, as a question of fact, whether petitioner made reasonable efforts to reunite the family, without reference to the ADA. [*Id.* at 26.]

In this case, respondent did not object to the services involved with his treatment plan or request transportation accommodations at the time the plan was adopted on January 22, 2013. On the contrary, at least initially, respondent informed caseworkers that transportation was not a barrier to reunification. At some point in March 2013, months after the adoption of the case service plan, respondent complained to caseworkers about a lack of transportation, but he did not

specifically claim a violation of his rights under the ADA. Given respondent's failure to timely raise such an argument, any claim based on the ADA is waived. *Id.*

In any event, even if respondent had timely raised the issue, it is clear that the DHS reasonably accommodated his injuries in the course of providing reunification services. In particular, respondent's assertion that the DHS failed to reasonably accommodate his transportation needs is unsupported by the record. The record reveals that respondent told the assigned foster care worker, Anastasia Zuzak, that transportation would not be a barrier to his efforts to participate in services because his cousin and girlfriend would give him rides. Moreover, Zuzak testified that she later gave respondent bus tickets and that, when informed respondent had difficulty getting to the bus, she gave respondent an application for Smart Bus disability service, which would provide door-to-door transportation for respondent and enable his compliance with services. Zuzak gave respondent an application for the Smart Bus on more than one occasion and another caseworker, Amanda Lisowski, sent an application to respondent by certified mail. Further, according to Lisowski, the DHS would have paid any fee associated with respondent's use of the Smart Bus. Respondent declined assistance from Zuzak with the application, indicating that he would have his girlfriend help him. Nonetheless, respondent failed to avail himself of these transportation options available to him. We note also that the record indicates that transportation was specifically provided to and from respondent's parenting classes and that any services that could be made available in-home were provided to respondent in-home so that transportation was not required. Given these efforts by the DHS, we conclude that reasonable transportation arrangements were made to accommodate respondent's disability. Thus, respondent has not shown that petitioner failed to make reasonable efforts to avoid termination of parental rights in this case, and we discern no clear error in the trial court's determination that statutory grounds for termination existed.

The trial court also did not clearly err in finding that termination of respondent's parental rights was in the best interests of the minor child. MCL 712A.19b(5). When evaluating a child's best interests, the trial court should weigh all evidence available and "consider a wide variety of facts that may include child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (quotation marks and citation omitted). Other relevant factors include "the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *Id.*

In this case, respondent argues on appeal that termination is not in the child's best interests because respondent was not provided with a fair opportunity to comply with the court ordered treatment plan. Respondent also maintains that termination will break the strong emotional ties between a four year old boy and his biological father. These arguments are without merit.

As discussed, the DHS made reasonable accommodations for respondent's disability and satisfied its obligation to make reunification efforts. Despite these efforts, respondent failed to comply with his case service plan, which was designed to address issues of domestic violence, substance abuse, and mental health issues. Respondent ultimately failed to benefit from the services offered, he has not demonstrated that he can meet his child's needs, and he in fact

continued to live in an environment that was not suitable for the minor child. Further, although the child's emotional ties with respondent would be severed by termination, there was no reason to believe this would create significant, long-term emotional harm. To the contrary, the evidence showed that the child had behavioral issues and that these issues were likely the result of attachment issues related to severe neglect while in respondent's care.

In contrast, the four-year-old child had been out of respondent's care for almost two years and was doing well in his placement with his maternal aunt. As required by *Olive/Metts*, 297 Mich App at 44, the trial court expressly addressed the child's placement with his maternal aunt and found that his relative caregiver was doing a great job meeting his medical and emotional needs, which included behavioral issues and aggression toward other children. Given the child's specific needs and the importance of stability, it is in his best interests to be cared for by someone who maintains a substance free life in a home environment suitable for children and who has the parenting skills to handle a high energy young child with behavioral issues. Considering that the child's mother had released her parental rights and that the child was placed with a loving caregiver who was prepared to adopt him, the trial court did not clearly err in determining that termination of parental rights was in his best interests.

Affirmed.

/s/ Joel P. Hoekstra

/s/ David H. Sawyer

/s/ Stephen L. Borrello